CF0000060186

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Division Bench (Criminal)

Cr.A. No 1437 Jyoti of 98

Appellant in jail : Ku. ~~Kiran~~ @ Bali, D/o Bheemrao Badhe Marathi, aged about 21 years, R/o House No. 433, Model Town, P.S. Supela, Bhilai, Distt. Durg.

Versus

Respondent : State of M.P., through S.H.O., P.S. Supela, Distt. Durg.

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE AGAINST THE JUDGMENT AND SENTENCE DATED 1-7-98 PASSED BY SHRI V.K. SHRIVASTAVA SESSIONS JUDGE DURG IN S.T. NO.203/97.

(39)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH* HON'BLE SHRI K.H.N. KURANGA, CJ &
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.1437 OF 1998

JUDGMENT FOR CONSIDERATION

Sd/-

JUDGE

30/07/2003

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

30/07/2003

POST IT FOR: 8/8/07/2003

Sd/-
L.C. Bhadoo
Judge

(10)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ &
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.1437 OF 1998

Ku. Jyoti alias Bali

VERSUS

The State of Madhya Pradesh

Present: Shri D.N. Prajapati, Advocate for the appellant.
Shri P.S. Koshy, Govt. Advocate, for the State/respondent.

J U D G M E N T

(Delivered on 9th of July 2003)

The following Judgment of the Court was delivered by ***L.C. Bhadoo, J:***

Accused/appellant Ku. Jyoti has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment of conviction and sentence dated 01/07/1998, passed by the learned Sessions Judge, Durg in Sessions Trial No.203 of 1997 by which the learned Sessions Judge after holding the accused/appellant guilty of the offence punishable under Sections 302 of the Indian Penal Code convicted and sentenced her to undergo imprisonment for life and to pay a fine of Rs.100/- in default of payment of fine to further undergo rigorous imprisonment for one month.

(2) Briefly stated the prosecution story is that Sunanda (since deceased) was married to Vishwas Rao four years prior to 10/09/1996 the date of incident and she was residing at the house of her husband. Her father-in-law, mother-in-law, brother-in-law and sister-in-law were also residing with them. Eight days prior to 10/09/1996 some quarrel took place between accused/appellant Ku. Jyoti and deceased Sunanda and as a result of that on 10/09/1996 when Sunanda was sleeping, accused/appellant Jyoti after pouring kerosene on her body set her on fire.. At that time mother-in-law and the husband of the deceased were also present in the house. The husband of deceased Sunanda immediately took two rags (Kathari) and wrapped her body to extinguish the fire and thereafter Vishwas Rao - the husband and mother-in-law of the deceased took her to Sector -9 Hospital. Dr. Trinath Das was present in the hospital and examined Sunanda. She had sustained 70% and she was conscious. On enquiry by the doctor Sunanda told him that her sister-in-law has set her on fire after pouring kerosene. Thereafter Sunanda was admitted to the burns unit and information was given to the Police Station on telephone about incident. On receiving information the Police recorded the same in the Rojnamcha Sanha at 3.10 P.M. Sub Inspector Suresh Sen reached the hospital and recorded the statement (Ex.P/2) of Sunanda. In her statement Sunanda again stated that her sister-in-law Jyoti after pouring kerosene on her body set her on fire. Since the incident took place within the jurisdiction of Supela Police Station, the statement of Sunanda, medical report and the copy of Rojnamcha Sanha were sent to Police Station, Supela. At Supela Police Station the case was registered for the offence punishable under Section 307 of the Indian Penal Code and thereafter on 11/09/1996 the Station House Officer M.D. Tiwari and the Senior Scientific Officer Dr. B.P. Maithil reached

House No.433, Model Town, Bhilai for inspection where Dr. Maithil inspected the place of incident and found that the place of incident was kitchen of the house and half burnt clothes were lying in the kitchen, corridor and at some places in the adjacent rooms. The kerosene oil was also found on the floor of the kitchen and the smell of the kerosene was coming out. The smell of the kerosene from the half burnt clothes was also coming out. Dr. B.P. Maithil had not found any signs regarding the preparation of tea or food in the kitchen and even the stove was not found there. In the kitchen gas stove with the cooking gas and three matchsticks were found but Match Box and the kerosene container were not found. The kerosene container was found in the courtyard near the bathroom. After inspecting the place of incident Dr. B.P. Maithil reached the conclusion that the case of deceased Sunanda is neither suicidal nor accidental. The Station House Officer M.D. Tiwari in turn seized all these articles in the presence of the witnesses. On 14/10/1996 Sunanda died in the hospital and on her death the case for murder was registered and the body was sent for post mortem examination. Dr. P.C. Agrawal conducted the autopsy. The seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur and after completion of the investigation the charge-sheet was filed against the accused/appellant for the commission of the offence punishable under Section 302 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Durg who committed the case to the Sessions Judge, Durg.

(3) The learned Sessions Judge framed the charge against the accused/appellant for the offence punishable under Section 302 of the Indian Penal Code. The accused/appellant denied the charge and asked for trial.

(4) The prosecution in order to prove the offence levelled against the accused/appellant examined in all eight witnesses at the trial. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure. In reply to most of the questions the accused stated that she does not know anything. She further stated that on the date of incident in between 12.00 and 3.00 P.M. she was present in the house of one Saraswati to learn embroidery work. In the house her sister-in-law Sunanda was sleeping in the room and her mother, brother Vishwas Rao and sister Karuna were present. During that time Sunanda went to bathroom and she herself poured kerosene on her body, went to kitchen and set herself on fire, and thereafter she raised cries. Her brother came and wrapped her body with the rag (Kathari) to extinguish the fire. In her defence, the accused/appellant examined four witnesses.

(5) After hearing the arguments of the learned Public Prosecutor and the learned counsel appearing for the accused/appellant, the learned Sessions Judge convicted and sentenced the accused/appellant as mentioned above.

(6) We have heard Shri D.N. Prajapati, learned counsel appearing for the accused/appellant and Shri P.S. Koshy, Govt. Advocate, appearing for the State/respondent.

(7) The question before the Court is as to whether the accused/appellant on 10/09/1996, in between 2 and 3 P.M. after pouring kerosene on the body of deceased Sunanda set her on fire. The whole case of the prosecution rests on two points which are

(A) The dying declarations made by the deceased; first before Dr. Trinath Das and second (Ex.P/2) before Sub Inspector Suresh Sen.

(B) The circumstantial evidence which was collected by Dr. B.P. Maithil from the place of incident.

(8) As far as point No.1 is concerned, learned counsel appearing for the accused/appellant argued that in this case there are three dying declarations. First dying declaration was made by the deceased before Dr.Trinath Das (PW-3), second dying declaration (Ex.P/2) was made before Sub Inspector Suresh Sen (PW-8) in presence of Dr. Uday Kumar (PW-2) and the third dying declaration (Ex.D/1) was made by the deceased before Naib Tahsildar S.K. Diwan (DW-1). Learned counsel for the accused argued that in the first two dying declarations deceased Sunanda stated that the accused/appellant after pouring kerosene on her body set her on fire whereas in the third dying declaration made before Naib Tahsildar S.K. Diwan (DW-1) she has categorically stated that she was burnt by accidental fire and nobody put her on fire. Therefore, in view of this contradictory dying declarations, these dying declarations cannot be relied upon. Moreover, there is no certificate given by the doctor on Ex.P/2 that the deceased was in a fit condition to give the statement.

(9) As per settled law, conviction can be based solely on the dying declaration of the deceased if the Court reaches the conclusion that the dying declaration is trust worthy, true, voluntarily and inspires

confidence. Therefore, we have to examine these dying declarations made by the deceased. Dr. Trinath Das (PW-3) has stated that on 10/09/1996 he was on duty in Casualty Ward. At about 5.30 P.M. Vishwas Rao, husband of deceased Sunanda and neighbour Amar Kumar brought Sunanda Rao to the hospital. At that time deceased Sunanda was fully conscious. Her body was burnt up to 70% and the burn injuries were on the face, back, both legs and the above the knee. On both the hands there were wounds due to burn. He further stated that on enquiry from the deceased as to who had burnt her, the deceased said that her sister-in-law after pouring kerosene on her, set her on fire. Thereafter the deceased was admitted to the burn Unit. His report is Ex.P/3. This witness has not been cross examined regarding extra judicial confession. Therefore, there is no reason for the Court to disbelieve the evidence of this witness because his presence was natural as he was a doctor on duty and the defence counsel had not raised any doubt or said anything against this witness that he has deposed against the accused on account of some reason. Therefore, there is no reason for this Court to disbelieve the evidence of Dr. Trinath Das (PW-3).

(10) Now coming to the dying declaration (Ex.P/2) made before Sub Inspector Suresh Sen (PW-8), he has stated that on 10/09/1996 he was in Bhilai Nagar Police Station as a duty officer. On receiving the information from Sector-9 Bhilai Steel Plant Hospital, he reached the hospital and found that the deceased was lying in the burnt condition. He recorded her statement in the presence of Medical Officer Dr. Uday Kumar who informed him that the deceased was in a position to give statement. On enquiry, the deceased gave the statement that there was some quarrel between her sister-in-law and

her and on account of that her sister-in-law after pouring kerosene on her body set her on fire and the time of the incident was in between 2.30 and 3.00 P.M.. The deceased further stated that when she was sleeping Jyoti poured kerosene on her body and thereafter set her on fire. He recorded the statement (Ex.P/2) of the deceased in his handwriting. The statement was recorded in presence of Dr. Uday Kumar. In the cross examination, he has stated that there is no certificate of the doctor on Ex.P/2. It is further stated that he sent a letter to the Naib Tahsildar for recording the dying declaration of the deceased but since the Naib Tahsildar did not come immediately, he recorded the statement. We have perused the dying declaration (Ex.P/2) of the deceased. On this dying declaration Dr. Uday Kumar has written in his own handwriting that "above recorded statement taken by the Police in my presence at 3.45 P.M.". This certificate shows that the deceased was fit to give the statement. Dr. Uday Kumar (PW-2) in his evidence has also stated that on 10/09/1996 the dying declaration of the deceased was recorded by the Police in his presence and the deceased was in a position to give the statement in which she has stated that since last eight days there were some quarrel between her and her sister-in-law and on that account her sister-in-law Jyoti after pouring kerosene on her body set her on fire. In para 5 of the deposition Dr. Uday Kumar has stated that the statement which was given by the deceased in question and answer form was written as it is, which is Ex.P/2 and on this document he has certified the same. This witness has also not been cross examined on the point of dying declaration. Learned counsel for the accused/appellant could not point out anything on account of which the evidence of Dr. Uday Kumar (PW-2) becomes doubtful. Therefore, in view of the above there is no reason for this Court to disbelieve the

evidence of Sub Inspector Suresh Sen (PW-8) and Dr. Uday Kumar (PW-2).

(11) A perusal of the dying declaration (Ex.P/2) shows that the deceased had categorically stated that the accused/appellant after pouring kerosene on her body set her on fire. The oral dying declaration made before Dr.Trinath Das (PW-3) and the dying declaration (Ex.P/2) made before the Sub Inspector Suresh Sen (PW-8) are the statements which were made immediately after the deceased was admitted to the hospital and even these statements were recorded when the husband of the deceased who is brother of the accused was present because he took the deceased to the hospital. Therefore, there is no reason for this Court to doubt these dying declarations of the deceased. It is true and trust worthy because the husband of the deceased who is brother of the accused was also present. In presence of the brother of the accused there was no chance to the deceased to speak any lie in order to falsely implicate the sister of her husband. The above evidence gets support from the evidence of Dr. B.P. Maithil (PW-1), Senior Scientific Officer, posted in the Forensic Science Laboratory, Mobile Unit, Durg. He along with Station House Officer, Supela Police Station reached the house of the deceased where she was burnt. In the evidence he has stated that he inspected the whole site and saw that the burnt clothes of the deceased were lying in the kitchen, corridor and in the adjacent room. The kerosene was also lying on the floor of the kitchen and the smell of kerosene was present. From the burnt clothes smell of kerosene was also coming out and nothing was found on the spot which indicates that some tea or food was prepared at the time of incident. No kerosene stove was found in the kitchen but the gas stove was found. At the

place of incident three burnt matchsticks were found but the match box and kerosene container were not found. The kerosene container was found in the courtyard near the bathroom. In his opinion if the deceased had herself poured kerosene on her body, the container must have been found in the kitchen. If the deceased wanted to commit suicide after pouring kerosene on her body in the courtyard why she should come to in the kitchen. He prepared the report under Ex.P/1 and stated that in his opinion some other person after pouring kerosene on the body of the deceased set her on fire. In his cross examination nothing is elicited to show his evidence is doubtful. In view of the above, the report (Ex.P/1) and the evidence of Dr. B.P. Maithil (PW-1) also supports the fact that the deceased was set on fire after pouring kerosene on her body.

(12) Now coming to the defence version that Naib Tahsildar (DW-1) recorded the dying declaration (Ex.D/1) in the hospital in which the deceased has stated that nobody had set her on fire, but she set herself on fire. As discussed above, earlier in time immediately after the incident the deceased made two dying declarations before the independent witnesses and those dying declarations are trust worthy and this dying declaration (Ex.D/1) was made on the next day. Therefore, it can be said that the deceased could have been pressurized or tutored by her in laws not to implicate her own sister-in-law and on account of that the deceased gave the said dying declaration before the Naib Tahsildar because there was time for the family members of the accused namely the husband of the deceased who was also present might have persuaded her not to state anything against Jyoti. Therefore, the subsequent dying declaration made by the deceased is not reliable.

(13) Now coming to the plea of alibi of the accused that at the time of incident she was in the house of Saraswati for learning the work of embroidery, the has been disbelieved by the trial Court and in our opinion rightly, because no register has been produced. DW-2 Smt. Saraswati has stated that she was not maintaining any attendance register. This type of evidence does not inspire confidence. Though DW-3 Deepak has been produced by the accused in her defence, but he has supported the case of the prosecution. He has stated that at the time of recording of dying declaration of the deceased by Sub Inspector Suresh Sen he was present in the hospital and the dying declaration bears his signature. He has categorically stated that the deceased was conscious and was in a position to speak and she was crying. In the cross examination he has stated that the doctor was present there. The statement Ex.P/2 was read over to him and thereafter he signed it. Therefore, from the evidence of this witness reliability of the statement (Ex.P/2) becomes more strong.

(14) In view of the above discussion, we are of the opinion that the oral dying declaration as well as the dying declaration (Ex.P/2) are true, trust worthy and made by the deceased immediately after the incident and that too in the presence of her husband and these dying declarations are corroborated by the evidence of Dr.B.P. Maithil (PW-1) who collected the circumstantial evidence at the time of inspection of the site. We are of the opinion that in view of the evidence of Dr. Maithil and two dying declarations, the prosecution has been able to prove beyond reasonable doubt that the accused is the person who poured kerosene on the body of the deceased and set her on fire and ultimately she died on account of 70% burns sustained by her.

(15) In view of the above discussion, we find no reason to take a different view from the view which has been taken by the learned trial Court. The judgment of the trial Court is based on sound reasoning and proper appreciation of the evidence adduced by the prosecution. It does not call for any interference by this Court.

(16) In the result, the appeal has no substance & force and the same is liable to be dismissed and it stands dismissed.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Brajesh*